



January 4, 2018

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U.S. Department of Justice
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Washington, DC 20530
BY FAX: (202) 616-9881

Robin C. Ashton
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RE: Investigating Improper White House Influence on Specific Investigations

Dear Mr. Horowitz and Ms. Ashton:

We write to ask your offices to open an immediate inquiry into whether attorneys at the Justice Department are acting in a specific enforcement matter involving the President's political opponents because of pressure from the President or other White House officials. For the Justice Department to pursue a specific investigation or enforcement action based on White House influence would violate our country's and the Department's most foundational principles—that we are a nation of laws, with equal justice under law. The Department and the American people rely on your offices to safeguard the Department's sacred obligations to the fair and impartial administration of the law. We ask that you open an immediate inquiry and take all appropriate remedial actions if any Justice Department officials are engaging in investigative or prosecutorial actions in a specific matter in response to White House political pressure.

I. Reports of White House Interference in a Specific DOJ Enforcement Matter

According to recent news reports, the Justice Department is now engaging in investigative or prosecutorial activity related to the President's political opponents in the face of substantial pressure from the White House. According to this report, Department officials "are acutely aware of demands from President Donald Trump that they look into Clinton's use of a private email server while secretary of state—and that they lock up her top aide, Huma Abedin."¹

¹ Betsy Woodruff, "Justice Department 'Looking Into' Hillary Clinton's Emails— Again," *The Daily Beast* (Jan. 4, 2018), <https://www.thedailybeast.com/justice-department-looking-into-hillary-clintons-emails-again>.

This recent report follows on a letter from the Department to the House Judiciary Committee indicating that “the Attorney General has directed” certain federal prosecutors to look into issues related to the Clinton email investigation and to “report directly to the Attorney General and the Deputy Attorney General.”²

The reported activity at the Department comes in the wake of repeated requests by the President to prosecute his former electoral opponent. Those attempts began during the campaign when President Trump and his surrogates regularly led “lock her up” chants at campaign rallies and the Republican National Convention. Mr. Trump’s threats to use the Justice Department against his opponent continued during one of the presidential debates, when candidate Trump promised to instruct the attorney general to investigate Secretary Clinton:

TRUMP . . . [I]f I win, I am going to instruct my attorney general to get a special prosecutor to look into your situation, because there has never been so many lies, so much deception. There has never been anything like it, and we’re going to have a special prosecutor.

. . .

So we’re going to get a special prosecutor, and we’re going to look into it, because you know what? People have been — their lives have been destroyed for doing one-fifth of what you’ve done. And it’s a disgrace. And honestly, you ought to be ashamed of yourself.

. . .

CLINTON: . . . [I]t’s just awfully good that someone with the temperament of Donald Trump is not in charge of the law in our country.

TRUMP: Because you’d be in jail.³

And those efforts have not ceased since Mr. Trump assumed office. The president has, on multiple occasions, called for DOJ to investigate Secretary Clinton and her aides:

² Letter from Stephen E. Boyd, Assistant Attorney General, to Hon. Robert W. Goodlatte, Chairman, House Committee on the Judiciary (Nov. 13, 2017).

³ Transcript of the Second Presidential Debate, N.Y. Times (Oct. 10, 2016), *available at* <https://www.nytimes.com/2016/10/10/us/politics/transcript-second-debate.html>.



Donald J. Trump ✓
@realDonaldTrump

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So many people are asking why isn't the A.G. or Special Council looking at the many Hillary Clinton or Comey crimes. 33,000 e-mails deleted?

4:44 AM - 22 Jul 2017

Donald J. Trump (@realDonaldTrump), Twitter (July 22, 2017, 4:44 AM),
<https://twitter.com/realDonaldTrump/status/888726438265966592>



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So why aren't the Committees and investigators, and of course our beleaguered A.G., looking into Crooked Hillarys crimes & Russia relations?

5:49 AM - 24 Jul 2017

Donald J. Trump (@realDonaldTrump), Twitter (July 24, 2017, 5:49 AM),
<https://twitter.com/realDonaldTrump/status/889467610332528641>



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...are now fighting back like never before. There is so much GUILT by Democrats/Clinton, and now the facts are pouring out. DO SOMETHING!

7:17 AM - 29 Oct 2017

Donald J. Trump (@realDonaldTrump), Twitter (Oct. 29, 2017, 7:17 AM),
<https://twitter.com/realDonaldTrump/status/924641278947622913>



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@realDonaldTrump

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Everybody is asking why the Justice Department (and FBI) isn't looking into all of the dishonesty going on with Crooked Hillary & the Dems..

3:57 AM - 3 Nov 2017

Donald J. Trump (@realDonaldTrump), Twitter (Nov. 3, 2017, 3:57 AM),
<https://twitter.com/realDonaldTrump/status/926403023861141504>



Donald J. Trump ✓
@realDonaldTrump

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....People are angry. At some point the Justice Department, and the FBI, must do what is right and proper. The American public deserves it!

4:11 AM - 3 Nov 2017

Donald J. Trump (@realDonaldTrump), Twitter (Nov. 3, 2017, 4:11 AM), <https://twitter.com/realDonaldTrump/status/926406490763784194>



Donald J. Trump ✓
@realDonaldTrump

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Crooked Hillary Clinton's top aid, Huma Abedin, has been accused of disregarding basic security protocols. She put Classified Passwords into the hands of foreign agents. Remember sailors pictures on submarine? Jail! Deep State Justice Dept must finally act? Also on Comey & others

4:48 AM - 2 Jan 2018

Donald J. Trump (@realDonaldTrump), Twitter (Jan. 4, 2018, 4:48 AM).

Sadly, according to these recent reports, it appears that President Trump's efforts to command the Justice Department to pursue a politically-motivated investigation of his opponent may finally have borne fruit.

II. Acting Based on White House Pressure Violates the Constitution, Ethical Rules, and the Justice Department's Most Sacred Duty

Pursuing an investigation in response to political pressure from the White House violates the Department's most sacred duty to the American people. In keeping with the words "Equal Justice Under Law" engraved on the Main Justice building, DOJ's mission requires the Department "to ensure fair and impartial administration of justice for all Americans." As the Department's website notes: "Thomas Jefferson wrote, 'The most sacred of the duties of government [is] to do equal and impartial justice to all its citizens.' This sacred duty remains the guiding principle for the women and men of the U.S. Department of Justice."⁴

For the Department to pursue or re-open an investigation based on political pressure also violates core principles of our Constitution. Every attorney in the Department swears an oath to

⁴ Department of Justice, About DOJ, <https://www.justice.gov/about>.

“support and defend the Constitution of the United States against all enemies, foreign and domestic” and to “faithfully discharge the duties of the office” in which they serve.⁵ The Constitution requires the President to take care that the law is faithfully executed—for him to seek or request a prosecution of his political opponents is the opposite of that. More than this, the Constitution guarantees to every American the due process of law, the freedom to engage in political speech, and the equal protection of the laws. For any Justice Department employee, from the Attorney General to a line attorney, to take action based on a political vendetta targeted at a specific person violates these core tenets of the Constitution.

The Supreme Court has been unequivocal on that point. The Department of Justice’s “selectivity in the enforcement of criminal law is [] subject to constitutional constraints.” *Wayte v. United States*, 470 U.S. 598, 608 (1985). Accordingly, the Department of Justice may not make a decision to investigate an individual “based on an unjustifiable standard such as race, religion, or other arbitrary classification,” *United States v. Armstrong*, 517 U.S. 456, 464 (1996), “including” an individual’s decision to “exercise . . . protected statutory and constitutional rights,” *Wayte*, 470 U.S. at 608. A decision to investigate an individual or members of an opposing political party because of their political opposition to the President would violate both the First and Fifth Amendments.

Investigating the President’s political opponents on the instructions of the President would also violate DOJ policy. The Department’s U.S. Attorneys’ Manual makes clear that investigative or prosecutorial actions may not be taken based on political considerations or White House pressure. The Manual explains that “[i]n determining whether to commence or recommend prosecution *or take other action* against a person,” an “attorney for the government should not be improperly influenced by” (1) the person’s “political association, activities, or beliefs” or (2) “the attorney’s own personal feelings concerning the person, the person’s associates, or the victim” or (3) “[t]he possible affect of the decision on the attorney’s own professional or personal circumstances.”⁶ Each of these factors appear to be implicated by the recent reports that the Department is taking investigative actions against the President’s political opponents in the face of pressure from the President.

These principles would be violated even if the Department is only conducting investigative activity for show or to appease the President. The Manual’s comments explain that these improper considerations “are listed here not because it is anticipated that any attorney for the government might allow them to affect his/her judgment, but in order to make clear that federal prosecutors will not be influenced by such improper considerations.”⁷ As the Manual explains, these principles are designed to “promote the reasoned exercise of prosecutorial authority and contribute to the fair, evenhanded administration of the federal criminal laws.”⁸ And they are further aimed at “promoting confidence on the part of the public and individual

⁵ 5 U.S.C. § 3331.

⁶ Department of Justice, U.S. Attorneys’ Manual § 9-27.260 (emphasis added).

⁷ *Id.* (Comment).

⁸ *Id.* § 9-27.001.

defendants that important prosecutorial decisions will be made rationally and objectively on the merits of the facts and circumstances of each case.”⁹ Even if the Department is only creating the appearance of an investigation to satisfy the President, it sends the message to the American people that it is no longer upholding its sacred duty.

This is especially so where, as here, career officials within the Department have already extensively investigated and twice formally declined the case. Principles of due process counsel that subjects of criminal investigations have the right to rely on the Department’s decisions and that they should not be continually at the mercy of political pressure to have the same evidence considered over and over again.

An investigation or prosecution motivated by political considerations also violates rules of professional conduct and prosecutors’ ethical obligations. The American Bar Association Model Rules of Professional Conduct provide that “[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice.”¹⁰ It is hard to imagine conduct more prejudicial to the administration of justice than engaging in investigative or prosecutorial activity in response to the President’s demands to lock up his political opponents. In addition, prosecutors have a special responsibility to “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.”¹¹ Department attorneys are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, which require them to adhere to the Constitution and laws of the United States, to act impartially, and to avoid even the appearance that they are violating the law or their ethical obligations.¹²

Finally, acting on a specific matter in light of White House pressure also violates long-standing policies that have sought to insulate the Department from this type of pressure. Since Watergate, both Republican and Democratic administrations have put in place written policies, called “contacts policies,” to ensure that the DOJ impartially exercises its law enforcement powers by restricting the Department’s contacts with the White House.¹³ As we

⁹ *Id.*

¹⁰ ABA Model Rules of Professional Conduct, Rule 8.4. As the comments to this Rule explain, “Lawyers holding public office assume legal responsibilities going beyond those of other citizens.” *Id.* comment 7.

¹¹ ABA Model Rules of Professional Conduct, Rule 3.8.

¹² 5 C.F.R. § 2635.101; *see also* 28 U.S.C. § 530B (“An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State.”).

¹³ *See, e.g.*, Eric Holder, *Communications with the White House and Congress*, Memorandum for Heads of Department Components and All U.S. Attorneys, May 11, 2009, <https://lawfare.s3-us-west-2.amazonaws.com/staging/2017/2009%20Eric%20Holder%20memo.pdf> (“Holder Memo”); Michael B. Mukasey, *Communications with the White House*, Memorandum for Heads of Department Components and U.S. Attorneys, Dec. 19, 2007, <https://assets.documentcloud.org/documents/3371650/Mukasey-12-19-07.pdf>.

explained in an earlier letter to the Inspector General,¹⁴ the longstanding policies restricting contacts between the White House and DOJ are most important in the context of enforcement and litigation actions involving specific parties.¹⁵

III. The Public and the Department Rely on Your Offices to Uphold the Department's Sacred Duty of Impartial Justice

President Trump has claimed that: “I have the absolute right to do what I want with the Justice Department.”¹⁶ That is, of course, not true. The President, like all public officials, is constrained by the Constitution and laws of the United States. His obligation to take care that the laws be faithfully executed requires that he safeguard principles of due process and equal treatment under law. He may not pick and choose the provisions of the Constitution that he wishes to follow, and he certainly may not intervene in specific Department matters to pursue a political vendetta.

In the face of President Trump's unprecedented and authoritarian approach to the Justice Department, it is incumbent upon the professional men and women of the Department to uphold the rule of law in America. As the U.S. Attorneys' Manual explains, the success of our law enforcement system “must rely ultimately on the character, integrity, sensitivity, and competence of those men and women who are selected to represent the public interest in the federal criminal justice process.”¹⁷

Recent reports suggest that DOJ leadership has been unable or unwilling to resist the President's illegal and inappropriate efforts to influence specific investigative actions. Accordingly, it falls to your offices to ensure that the men and women of the Department are upholding their duties and not succumbing to political influence from the White House. As you know, the Department's Inspector General's mission is to “detect and deter waste, fraud, abuse and misconduct in DOJ's programs and personnel”¹⁸ And the Office of Professional Responsibility was established by order of the Attorney General to ensure that DOJ attorneys and law enforcement personnel perform their duties “in accordance with the highest professional standards expected of the nation's principal law enforcement agency.”¹⁹ Reports that Department officials are acting in a specific enforcement matter based upon White House

¹⁴ Letter from Protect Democracy et al. to the Honorable Michael E. Horowitz (June 12, 2017).

¹⁵ Memo from Protect Democracy to Interested Parties, *White House Communications with the DOJ and FBI*, Mar. 8, 2017, at <https://protectdemocracy.org/agencycontacts/>.

¹⁶ Michael S. Schmidt and Michael D. Shear, “Trump Says Russia Inquiry Makes U.S. ‘Look Very Bad’” *The New York Times* (Dec. 28, 2017), https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html?_r=0.

¹⁷ U.S. Attorneys' Manual § 9-27.001.

¹⁸ Department of Justice, Office of the Inspector General: Mission, <https://oig.justice.gov/>.

¹⁹ Department of Justice, About The Office And OPR Policies And Procedures, <https://www.justice.gov/opr/about-office-and-opr-policies-and-procedures>.

political pressure indicates the potential for serious “abuse and misconduct” and a breach of the Department’s “highest professional standards,” demanding the attention of each of your offices.

We therefore ask your offices, together or individually, to open an immediate investigation into Department leadership, prosecutors, and any other officials who are acting on a specific enforcement matter in which the President has sought to exert improper political influence. You should assess whether the President’s political pressure has affected or in any way contributed to any investigative action or decision in this matter. Even if Department officials are merely engaged in a show of activity to appease the President or other White House officials, this would be a severe breach of the laws and Constitution of the United States—and of the sacred trust the American people place in the Department. If you discover violations of Departmental, legal, or ethical rules or standards, we request you take appropriate action to remedy those breaches and report your findings to Congress and the American people. We further request the opportunity to meet with you to discuss any questions you may have related to these issues.

We look forward to your response and thank you for your important work.

Sincerely,

A handwritten signature in cursive script that reads "Justin Florence".

Justin Florence
Legal Director
Protect Democracy

cc: Senator Chuck Grassley
Chairman, Senate Judiciary Committee

Senator Dianne Feinstein
Ranking Member, Senate Judiciary Committee

Congressman Robert Goodlatte
Chairman, House Judiciary Committee

Congressman Jerold Nadler
Ranking Member, House Judiciary Committee